

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

ROBIN MESEY, et al.,)
vs.)
Plaintiffs,)
vs.)
CITY OF VAN BUREN, MO., et al.,)
Defendants.)
Case No. 1:19-cv-71 SNLJ

MEMORANDUM and ORDER

Plaintiffs filed a motion for taxation of costs of service to be assessed against defendant Charles Roper and for attorneys' fees [#13] on August 24, 2019. Roper had failed to return the waiver of service sent to him by the plaintiffs, so plaintiffs had incurred costs when they had to serve him formally with process. Federal Rule of Civil Procedure 4(d)(2) provides that

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

- (A) the expenses later incurred in making service; and
- (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

Fed. R. Civ. P. 4(d)(2). Plaintiffs requested the \$65 service fee plus \$1360 in attorneys' fees.

Defendant Roper did not respond to the motion. The Court granted the motion on September 10, awarding plaintiffs the cost of service plus attorneys' fees totaling \$1,425.

On September 17, 2019, defendant Roper filed the instant motion to amend the court order awarding attorneys' fees. Defendant contends that the Rule 4 permits the Court to award plaintiffs the \$65 service fee but not the attorneys' fees because the attorneys were not required to file the motion to obtain collection of the \$65 fee. Defendant suggests that, if someone had just asked, he would have handed over the \$65.

Defendant, however, failed to respond at all to the motion. He was given ample time to do so. He admits that, at the time the motion was filed, he had counsel entered in this case. Defendant's motion will be denied.

Plaintiffs now request an additional \$440 to cover the expenses of responding to defendant's motion. That request is denied.

Accordingly,

IT IS HEREBY ORDERED that defendant Roper's motion to amend court order awarding attorneys' fees [#17] is DENIED.

Dated this 8th day of October, 2019.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE